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PATENT

Attorney Reference Number 6395-59041-01  
Application Number 09/889,317

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Tripp et al.

Application No. 09/889,317

Filed: July 13, 2001

Confirmation No. 2319

For: METHOD FOR THE PREVENTION AND  
TREATMENT OF DISEASES CAUSED  
BY AN INFLAMMATORY RESPONSE  
MEDIATED BY ENDOGENOUS  
SUBSTANCE P BY USING ANTI-  
SUBSTANCE P ANTIBODIES

Examiner: Francois P. Vandervegt

Art Unit: 1644

Attorney Reference No. 6395-59041-01

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Attorney or Agent  
for Applicant(s)

Date Mailed March 16, 2006

DECLARATION OF DR. TRIPP UNDER 37 C.F.R. §1.132

1. I, Ralph A. Tripp, am an inventor of the above-referenced patent application. I was employed by the Centers for Disease Control and Prevention, the assignee of the above-identified pending patent application. I hold a Ph.D. degree in immunology, and have expertise in RNAi therapeutics, innate and adaptive immune responses to respiratory viral infections, cytokines, chemokines and host cell defense mechanisms. I was employed by the Centers for Disease Control and Prevention for 7 years studying the mechanisms of immunity and disease pathogenesis associated with respiratory virus infections.

2. I have reviewed the specification of the above-referenced application, and the Office action, dated April 8, 2005. It is my understanding that claims 1-3, 5, 13, 14, 19-22, 31, 32, 37, 38, and 41-42 have been rejected as allegedly being obvious.

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3. As stated in my Declaration submitted on August 5, 2005, a major limitation in the effectiveness of monoclonal antibodies is immunogenicity of the monoclonal antibody itself; the development of an inflammatory reaction following administration can significantly limit the usefulness of an antibody. The immunogenicity of antibodies that specifically bind an antigen of interest (such as substance P), or fragments of this antibody, cannot be reliably predicted. In addition, the route of administration can affect the immunogenicity of an antibody; the effect of the route of administration on immunogenicity also must be determined experimentally.

4. Hemmingson et al. (Scand. J. Infect. Dis. 25(6): 783-985, 1993) describes that the nasal administration of non-specific immunoglobulins, mainly IgA, could be used for short-term physiological prophylaxis for the prevention of upper respiratory tract infections (colds) in healthy skiers. An upper respiratory tract infection (the common cold) is different from an infection with respiratory syncytial virus (RSV). RSV is a pathogenic agent (a virus) that induces lung inflammation, and can cause significant morbidity and mortality in preterm infants and young infants with chronic lung disease.

Currently, there are only two options for immunoprophylaxis for preventing respiratory syncytial virus (RSV) infection in infants. Respiratory Syncytial Virus Immune Globulin Intravenous (RSV-IGIV) is a polyclonal hyperimmune globulin prepared from donors selected for having high serum titers of RSV neutralizing antibody. SYNAGIS® (PALIVIZUMAB) is a humanized murine monoclonal anti-F glycoprotein IgG<sub>1</sub> antibody with neutralizing and fusion inhibitory activity against RSV. Both of these compositions are approved for use in the prevention of serious lower respiratory tract disease caused by RSV in pediatric patients at high risk of RSV disease.

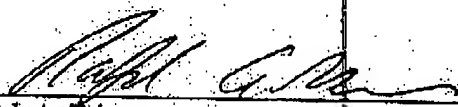

These compositions are administered either intramuscularly or intravascularly. Specifically, SYNAGIS® is supplied as a sterile, preservative free solution, and can be administered by intramuscular injection only. A copy of the package insert for SYNAGIS® is attached as Exhibit A. RSV-IGIV prophylaxis requires intravenous access, and is administered intravascularly as a 4-hour infusion. A copy of a printout from the British Columbia Ministry of Health describing RSV-IGIV administration is attached as Exhibit B.

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Data on the effect of the route of administration (intranasal versus intraperitoneal) of F(ab)<sub>2</sub> anti-substance P antibodies fragments was presented in the Declaration of Ralph A. Tripp Under 37 C.F.R. § 1.132, that was submitted to the U.S. Patent and Trademark Office on August 5, 2005. The data presented therein documents an unexpectedly superior effect when F(ab)<sub>2</sub> anti-substance P antibodies fragments were administered intranasally (as compared to intraperitoneal administration). The two commercially available products for the prevention of lung inflammation caused by RSV are administered systemically by injection (either intravascular or intramuscular injection). In view of the prior routes of administration, one of skill in the art would have predicted a systemic route of administration, such as intramuscular, intraperitoneal, or intravenous administration, would be more efficacious and have less unwanted side effects than an intranasal route of administration for the treatment of a lung inflammatory disorder.

5. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
Ralph A. Tripp  
Date

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## RSV-IGIV to prevent RSV infection

### Examples

Brand Name	Chemical Name
RespiGam	respiratory syncytial virus immune globulin intravenous (RSV-IGIV)

### How It Works

RSV-IGIV is used to help prevent or decrease complications of respiratory syncytial virus (RSV) infection, such as pneumonia and bronchiolitis. RSV-IGIV is made up of several proteins (antibodies) obtained from many human blood donors. The antibodies were created by the donors' natural defence (immune) systems to fight RSV.

RSV-IGIV is given through a vein (intravenous, or IV) in monthly doses for the entire RSV season (usually from November through March). It is given over about 4 hours in a hospital or doctor's office or at home.

### Why It Is Used

RSV-IGIV is given only to help prevent RSV in children who have a high risk of developing complications. Palivizumab, another type of monoclonal antibody used for this purpose, is generally preferred over RSV-IG. However, either medication can be given for children at risk for RSV complications who:

**EXHIBIT**
**B**

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- Have chronic lung disease (CLD), also sometimes called bronchopulmonary dysplasia, and are currently younger than 24 months. The child must have received treatment for the lung disease within the previous 6 months.
- Were born at least 8 weeks prematurely regardless of whether they have CLD. These children may benefit from treatment until they are 6 to 12 months old.
- Were born 5 to 8 weeks prematurely and have at least one additional risk factor. Palivizumab is considered for these babies on an individual basis. Additional risk factors include babies who:
  - Weighed less than expected at birth (low-birth-weight infants) and have other health problems that place them at risk.
  - Live in a home with other young children.
  - Go to child care centres.
  - Are exposed to tobacco smoke.
- Have impaired immune systems from diseases (such as AIDS) or take medication that suppresses the immune system, such as chemotherapy or steroids.<sup>1</sup>

This medication is not an effective treatment for children already infected with RSV. It should also not be given to children who have a cyanotic congenital heart defect.

#### How Well It Works

RSV-IGIV provides moderate protection for babies.<sup>2</sup> RSV-IGIV has shown to reduce admission rates to hospitals in children born prematurely, in children with chronic lung disease, and in children with a combination of risk factors.<sup>3</sup>

#### Side Effects

Side effects of RSV-IGIV are uncommon but can include:

- Allergic reaction.
- Fever.
- Nausea and vomiting.
- Pulmonary edema.

Although there is a potential for contracting HIV infection, hepatitis, or other diseases from the blood product that makes up RSV-IGIV, the risk is extremely rare. All blood donors are carefully screened and blood products are treated for viruses. This process has virtually completely eliminated any risk of exposure from RSV-IGIV.

#### What To Think About

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